No. 10 ORIGINAL

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In the Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

APPENDIX TO PETITION FOR REHEARING BY THE STATE OF LOUISIANA

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In the opinion rendered herein on May 31, 1960, the Court said that it did not intend to settle the location of the coast line of Louisiana or that of any other state, but that such matter should be postponed to a later stage of the case (Op. p. 63). In that connection, it is important now to allude to an error which the Court made in considering "coast" and "shore" to be interchangeable (Op. p. 75), because that construction led to other errors in the opinion which were prejudicial to Louisiana.

The Court erred in its footnote 108 in stating that it was obvious that the term "coast" was used in Louisiana's Act of Admission in a non-technical sense to denote what is actually the "shore", and in supposing that this is demonstrated by a comparison with the provisions in the Acts of Admission of Mississippi and Alabama providing for a measurement of six leagues from shore.

The Court further erred in misconstruing the decision in *Louisiana v. Mississippi*, 202 U.S. 1, 47, to have held that the "coast" referred to in Louisiana's Act of Admission was the St. Bernard marshes on the main land and not the Chandeleur Islands, when in fact in that case the Court held that when the Louisiana Act used the words, "within three leagues of the coast", the coast referred to is the whole coast of the State, and the peninsular of St. Bernard forms an integral part of it; and it is not to be supposed that the islands referred to by Congress in the Louisiana Act of Admission were solely those islands to the south of the State.

The fact that the Court erred in construing the word "coast" in Louisiana's Act of Admission to mean "shore" is further demonstrated by the fact that only five years previous to the Congressional Act of admitting Louisiana into the Union, Congress, on February 10, 1807, 2 Stat. 413, enacted a law authorizing the President, then Thomas Jefferson, to cause a survey to be taken of the *coasts* of the United States within 20 leagues of any part of the *shores* of the United States. This Act made a clear distinction between the two terms. This Act also undoubtedly established territorial waters to 20 leagues from shore as national policy,—the same as the Treaty of 1783 with the British Crown had established the 20 league line as national policy. It was this Treaty which prompted the framers of the Constitution to provide in Article VI, Clause 2, that "all

treaties made are a part of the supreme law of the land." (69th Congress, 1st Session, House Document No. 398, p. 618).

The further fact that the Court erred in construing the word "coast" in its "nontechnical" sense as meaning "shore" is proved by the fact that Congress had enacted an Act supplementary to one entitled, "An Act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans, and the District of Louisiana," on April 21, 1806, authorizing the Secretary of the Treasury "to cause a survey to be made of the sea coast of the Territory of Orleans from the Mouth of the Mississippi to Vermilion Bay, inclusively, and as much further westwardly as the President of the United States shall direct, and also of the Bays, Inlets, and navigable waters connected therewith." (U.S. Stat. at Large, 6th, 12th Congress, 1799-1813, Vol. II—9th Congress, Secs. 1 ch. 38-39). On December 20, 1810, 11th Congress, 2nd Session, two Senate Resolutions were adopted requesting the President and the Secretary of the Treasury, respectively, to report to the Senate the proceedings and measures taken in execution of the Acts of February 10, 1807 and April 21, 1806, with respect to surveying the coasts of the United States, and in making a survey of the coast of the Territory of Orleans. (See American State Papers).

President James Madison transmitted to the Senate a report complying with the Resolution of December 20, 1810; and the President also communi-

cated a report of the Secretary of the Treasury respecting the survey of the coast of the Territory of Orleans, together with survey documents relative thereto; and the reports and documents were ordered printed for the use of the Senate, on February 4, 1811 (See American State Papers).

Only sixteen days later the Enabling Act for the Territory of Orleans was enacted by Congress on February 20, 1811, with the same description of its territorial limits as in the Act of Admission of Louisiana as a State on April 8, 1812, as "including all that part of the Louisiana Territory" . . . "contained within the following limits, that is to say:" . . . "within three leagues of the *coast*." Undoubtedly the United States Senate called for a report of the survey of the seacoast of the Territory of Orleans, which it received and filed on February 4, 1811, while it was considering or debating the passage of the Enabling Act for the Territory of Orleans, which it enacted sixteen days later on February 20, 1811, so as to determine the location of the "coast" line with respect to the territorial boundary to be finally defined for the territory of Orleans, and later in the Act of Admission for Louisiana.

If further proof of the error of the Court in construing the word "coast" to mean "shore" were needed, reference might be had to a decision of this Court in *Queyronze v. United States*, 3 Wall. 83 at p. 92, in 1865, that "Ship Shoal light, which is laid down on the coast survey charts as more than a hun-

dred miles west of the Mouths of the Mississippi." Evidently, this coast line was surveyed and laid down on the coast survey charts under authority of the 1806 Act of Congress for the survey of the sea coast of the Territory of Orleans from the Mouth of the Mississippi to Vermilion and further westwardly, because the next Act of Congress after the Acts of 1806 and 1807, on the matter of surveying the coasts of the United States, or the line dividing the high seas from the inland waters, was the Act of February 19, 1895, 28 Stat. 672, 33 U.S.C. 151.

In considering the particular claim of Louisiana, the Court erred first in misquoting the descriptive paragraph from the Act of Congress admitting the State to the Union in 1812, by leaving out a most important part of the boundary description reading, "all that part of the territory . . . contained within the following limits, that is to say: . . . beginning at the mouth of the River Sabine; thence by a line to be drawn along the middle of said river, including all islands, to the 32nd degree of latitude . . . to the Gulf of Mexico; thence bounded by the said Gulf to the place beginning, including all islands within three leagues of the coast;" and the Court erred in holding that the misquoted language of the Act appeared clearly to support the government's position that the phrase "including all islands within three leagues of the coast" includes only the islands themselves and not all waters within three leagues of the coast.

The same clause "including all islands" is found

in the description of the western boundary line to be drawn along the middle of the Sabine River. Certainly on the well-founded proposition that the greater includes the lesser, the fact that the line to be drawn along the middle of the River Sabine includes all islands does not destroy that western boundary any more than the inclusion of the lesser "including all islands" within three leagues of the Gulf coast, destroy the three league gulfward boundary of the State of Louisiana.

A proper consideration of the entire descriptive sentence of Louisiana's boundary in its congressional Act of Admission, therefore, will demonstrate beyond argument that Louisiana's gulfward boundary extends three leagues in the Gulf from its coast. The court's error as above mentioned is further demonstrated by the fact that both the Senate Committee on Interior and Insular Affairs and the House Committee on the Judiciary recognized and treated the States of Texas, Louisiana, and Florida to have boundaries three leagues from the coast in the Gulf of Mexico.

House Report No. 215, 83rd Congress, First Session, on H.R. 4198 and previous hearings, at p. 57; and Senate Report No. 133, 83rd Congress, First Session, on S.J. Res. 13, at page 76, show that the areas of submerged lands within state boundaries coincide with the three-league limit for the states of Texas, Louisiana, and the Florida Gulf Coast as established before or at the time of their respective entry into the Union.

The Court in Note 108 (Op. p. 62) refers to the modern precise usage of the terms coast and shore. We have already shown that in 1807 the Congress ordered a survey of the **coast** of the United States within twenty leagues from **shore,** so the words could not have been synonomous.

Reference to a dictionary then current demonstrates the correct precision with which Congress chose its words upon which Louisiana is entitled to rely as it has throughout its history:

> "An American Dictionary of the English Language 1828 Noah Webster", with these definitions:
>
> "Coast, * * * 1. The exterior line, limit or border of a country, as in scripture, 'From the river to the uttermost sea shall your coast be. Deuteronomy' * * * Hence the word may signify the whole country within certain limits."
>
> "Shore, * * * the coast or land adjacent to the ocean or sea, or to a large lake or river. *This word is applied primarily to the land contiguous to water;* * * *" (Emphasis ours).

The Court further erred in stating that Louisiana relied on a 1954 Statute of its own as *establishing* the state's boundary at three leagues seaward of the line between inland and open waters and as *establishing* Louisiana's coast, when a casual reading of the preamble and body of the Act will show that all the Louisiana Legislature did by Act 33 of 1954 was to *accept and approve the coast line* of the State of Louisiana *as designated and defined by agencies of the*

federal government under specific authority of Acts of Congress passed in 1807, 1895 and 1946, and to redefine its seaward boundary three leagues from coast in the Gulf of Mexico as described in its Congressional Act of Admission of April 8, 1812.

Respectfully submitted,

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PROOF OF SERVICE

I, Jack P. F. Gremillion, Attorney General of the State of Louisiana, of counsel for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that I have served copies of the foregoing document, entitled, "Appendix to Petition for Rehearing by the State of Louisiana" on opposing counsel by mailing the required number of copies to the Attorney General and the Solicitor General of the United States, respectively, addressed to them at their offices in the Department of Justice Building, Washington, D.C., said copies having been sent Air Mail, postage prepaid, on June 23, 1960.

JACK P. F. GREMILLION

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